

Xi (Migration) [2019] AATA 1443 (9 April 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr William Wang Xi

CASE NUMBER: 1830148

DIBP REFERENCE(S): BCC2018/1644021

MEMBER: Tim Connellan

DATE AND TIME OF ORAL DECISION AND REASONS: 9 April 2019 at 3:54 pm (VIC time)

DATE OF WRITTEN RECORD: 29 April 2019

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision under review.

CATCHWORDS

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – bogus document – form 1229 – signature of applicant’s father – credibility issues – decision under review affirmed

1.

LEGISLATION

Migration Act 1958 (Cth), s 65

Migration Regulations 1994 (Cth), Schedule 2, cls 500.217, 500.317; Schedule 4, PIC 4020

2.

APPLICATION FOR REVIEW

3. This is an application for review of a decision made by a delegate of the Minister for Immigration on 27 September 2018 to refuse to grant the visa applicant a Student (Temporary) (Class TU) Subclass 500 visa under the *Migration Act 1958* (the Act).
4. At the hearing on 9 April 2019 the Tribunal made an oral decision and gave an oral statement of decision and reasons. The following is the written record of those reasons.

STATEMENT OF DECISION AND REASONS

5. MEMBER: Mrs Wang, you have been in Australia since 16 September 2016. This application for a student visa for your son, William, was lodged on 12 April 2018. The application was refused on 27 September 2018 because the delegate found you did not meet the criteria in 500.217 which deals with what are known as Public Interest Criteria, referred to as PIC.
6. To be eligible from the grant of a student visa an applicant must satisfy a range of criteria set out in the regulations. One of those is PIC 4020 which says that to satisfy that criterion: there is no evidence before the Minister, or in this case the Tribunal, that the applicant has given or caused to be given a bogus document, or information that is false or misleading in a material particular in relation to a visa application.
7. In your case the delegate found that, in support of your son William's application, you provided a form 1229, which was purported to be signed by both you and your husband, William's father. Following investigation, the delegate came to the belief that your husband, William's father, had not signed the form and therefore you had provided a bogus document.
8. You were invited to respond to the delegate's concern that you had provided a bogus document, and in response you maintained you had not provided any bogus documents, that your husband was in China, and your father had arranged for him to sign the form, which your father then sent to you here in Australia.
9. You provided evidence of there being family violence in your family and you say, following that family violence, you arranged an intervention order and your husband left Australia and returned to China. You say you believe that he signed the document and has now changed his mind about allowing William to receive a visa to stay in Australia with you.
10. The delegate was not satisfied with your response and refused his application. You appealed that decision to be reviewed by this Tribunal.
11. As I said to you, the role of the Tribunal is to take a fresh look at your application and consider whether William is eligible for the grant of a student visa. There are two steps in the process. First, the Tribunal must consider whether you have provided a bogus document in breach of PIC 4020, and if satisfied that such a breach has occurred, it must consider whether the requirements to meet PIC 4020 should be waived.
12. The decision as to whether or not an application is refused when an applicant fails to meet PIC 4020 may be waived if there are compelling circumstances that affect the interests of Australia or compassionate or compelling circumstances that affect the interests of an Australian citizen, permanent resident, or an eligible New Zealand citizen which justify the granting of a visa.

13. In your case, in support of William's application you provided this form 1229, which you say was signed on 9 April 2018. The Tribunal today phoned your father in China and took evidence from him in which he said he was there and had got your husband to sign the form. However, the situation is, as was recorded in the primary decision, the Department sent you two emails in July 2018 in an attempt to organise a telephone interview with you, but you did not respond.
14. When initially checking your application, the Department through an office in China, contacted and spoke with your husband. He unequivocally stated that he did not provide his signature. He said he did not agree to the grant of an Australian visa to your son, and he repeated that he did not sign any form 1229.
15. The situation therefore is that the evidence you give and the evidence your husband gives are completely opposite. You were asked to provide evidence that would indicate the signature provided on the form was that of your husband; you have failed to do so.
16. The question for the Tribunal is: where is the truth in this matter? As it stated in the primary decision, your husband's testimony tends to show that the form 1229 provided is counterfeit and has been altered by a person who does not have the authority to do so.
17. As it said in the primary decision, Mr Tao Xi's testimony was provided freely, without the benefit of preparation. The delegate found, and the Tribunal agrees with the delegate's finding that your husband's evidence is more believable.
18. I place more weight on the testimony of Mr Tao Xi. I am satisfied that Mr Tao Xi did not sign the 1229 form provided with the visa application. I am satisfied that the signature purported to be that of Mr Tao Xi is either counterfeit or fake. As such, I reasonably suspect that the form 1229 provided is counterfeit or has been altered by a person who does not have the authority to do so, and therefore it is a bogus document under the Act.
19. I outlined to you in detail the provisions of when the requirement to satisfy PIC 4020 may be waived, and you have provided no evidence of circumstances that would lead to the waiver of the requirement to satisfy PIC 4020.
20. I have taken into account your claims about the impact that this is likely to have on your studies and your son, and your fears of returning home. However, I am not satisfied these circumstances satisfy the definition of circumstances that would lead to a waiver.
21. Based on the available evidence I am not satisfied that you meet PIC 4020. As a result, clause 500.317 is not met. As you do not meet clause 500.317 I find that your son, William, is not eligible for the grant of a student visa, and it is therefore the decision of this Tribunal to refuse the application for a student visa.

DECISION

22. The Tribunal affirms the decision under review.

Tim Connellan
Member